

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

WILLIAM PATRICK,

Civil No. 05-3035-CO

Plaintiff,

FINDINGS AND RECOMMENDATION

v.

JUDGE RICHARD MICKELSON,

Defendant.

COONEY, Magistrate Judge:

This is a civil action in which plaintiff alleges that defendant violated his rights under the United States Constitution. Defendant Mickelson moved to dismiss plaintiff's complaint (Docket #4). This court recommended that the motion be granted and the case be dismissed (#7). District Court Judge adopted the recommendation dismissing the case (#14), and a judgment was entered dismissing the case (#15). Plaintiff moves for reconsideration of the dismissal of the case (#16).

DISCUSSION

Reconsideration of a decision is appropriate if the court: 1) is presented with newly discovered evidence; 2) committed clear error or the initial decision was manifestly unjust; or 3) there is an intervening change in controlling law. See School Dist. No. 1J, Multnomah County, Or. v. ACandS, Inc., 5 F.3d 1255, 1263 (9th Cir. 1993), cert. denied, 512 U.S. 1236 (1994). Plaintiff has not presented any newly discovered evidence, the court did not commit clear error and the initial decision was not manifestly unjust, and plaintiff has not pointed to any intervening change in the controlling law. Therefore, plaintiff has not shown reconsideration is appropriate, and plaintiff's motion for reconsideration should be denied.

RECOMMENDATION

Based on the foregoing, it is recommended that plaintiff's motion for reconsideration (#16) be denied.

This recommendation is not an order that is immediately appealable to the Ninth Circuit Court of Appeals. Any notice of appeal pursuant to Rule 4(a)(1), Federal Rules of Appellate Procedure, should not be filed until entry of the district court's judgment or appealable order. The parties shall have ten days from the date of service of a copy of this recommendation within which to file specific written objections with the Court. Thereafter, the parties have ten days within which to file a response to the objections. Failure to timely file objections to any factual determinations of the Magistrate Judge will be considered a waiver

of a party's right to de novo consideration of the factual issues and will constitute a waiver of a party's right to appellate review of the findings of fact in an order or judgment entered pursuant to the Magistrate Judge's recommendation.

DATED this ____3____ day of August, 2005.

_____/s/_____
UNITED STATES MAGISTRATE JUDGE